

**AUSTIN-BERGSTROM INTERNATIONAL AIRPORT
COMPRESSED NATURAL GAS MOTOR FUEL RETAIL VENDOR PERMIT AND LEASE**

granted by

CITY OF AUSTIN
(City)

to

CLEAN ENERGY
(Operator)

**AUSTIN-BERGSTROM INTERNATIONAL AIRPORT
COMPRESSED NATURAL GAS MOTOR FUEL RETAIL VENDOR PERMIT AND LEASE**

THIS COMPRESSED NATURAL GAS MOTOR FUEL RETAIL VENDOR PERMIT AND LEASE ("Permit") is granted as of the 1ST day of January 2010 (the "Effective Date") by the City of Austin, Texas (the "City") to **CLEAN ENERGY, a California corporation ("Operator")**, subject to the following terms, conditions and covenants.

1. DEFINITIONS.

As used in this Permit, the following terms shall be defined as follows:

- A. Airport – Austin-Bergstrom International Airport, a municipal airport in the City of Austin, Travis County, Texas owned and operated by City.
- B. Applicable Law - all applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, or directives of any governmental authority having jurisdiction over the Airport, the Premises or the Station.
- C. CNG - pipeline quality natural gas, compressed for vehicle use.
- D. CNG Vehicle(s) - motor vehicles powered by internal combustion engines using CNG as a primary fuel.
- E. Contract Year – a period of one calendar year commencing on the Effective Date or anniversary date of the Effective Date.
- F. Date of Beneficial Occupancy or DBO – The earlier of the date upon which the Station opens for business or one year the Effective Date.
- G. Director – the Executive Director of the City of Austin Department of Aviation or duly authorized designee.
- H. FAA – the Federal Aviation Administration, or successor agency having jurisdiction over airport operations.
- I. Gasoline Gallon Equivalent or GGE - 124,800 British Thermal Units/gallon.
- J. "Party" or "Parties" means City and Operator, in their respective capacities as parties to this Agreement.
- K. Permit Fee – the fee payable by Operator to the City under Section 5 of this Permit for the privilege of operating the Station on the Airport.
- L. Premises - that portion of the Airport upon which the Station will be constructed and operated as more fully described in **Exhibit A**.
- M. Retail Customers – persons who purchase CNG for their CNG Vehicles, excluding the City and its designated shuttle bus management company.
- N. Station – the unattended self-service CNG fueling station installed and constructed by Operator, or its authorized affiliates or contractors, on the Premises to sell CNG to retail taxable and tax-exempt customers.
- O. TSA – the Transportation Security Administration, or successor agency that regulates airport and aviation security.

2. RIGHTS OF OPERATOR

- A. General. The City hereby leases the Premises to Operator, its successors and permitted assigns, and grants Operator, its successors and permitted affiliates, contractor and assigns, the right to install, construct, operate, and maintain the Station on the Premises, for the term of this Permit, subject to (1) the covenants, agreements, terms, provisions, and limitations of this Permit, and (2) all rights, restrictions, encumbrances and matters of record to the extent the same are valid and enforceable.
- B. Access to Premises. Subject to Operator performing its obligations under this Permit, including, but not limited to payment of Permit Fees hereunder, City grants Operator the non-exclusive right of reasonable ingress to and egress from the Premises over Airport roadways designated for such purpose, for itself and its officers, employees, customers, agents, invitees, vendors, and contractors. Such right of access is subject to such rules and regulations as the Director, the FAA, TSA, or other governmental authority, may reasonably implement. Operator shall not interfere with or impair the use of public access roadways by other Airport users or Operators.
- C. Existing Condition. Operator accepts the Premises **AS IS, WITH ALL FAULTS**, and that City has not made any representations, warranties, covenants, or agreements, express or implied, regarding (a) the value, nature, quality, or condition of the Premises, (b) the income to be derived from the Premises, (c) the suitability of the Premises for any activity or use which Operator may conduct thereon, (d) the compliance of the Premises or its operation with any applicable laws, ordinances, or regulations, or (e) the habitability, marketability, or fitness for a particular purpose of the Premises. Operator further acknowledges and agrees that any information which City procures from a third party and provides to Operator with respect to the Premises may be delivered without any independent investigation or verification of such information by City, and City makes no representations as to the accuracy or completeness of such information.

3. TERM

- A. Initial Term. The term of this Permit shall commence on the Effective Date, and, unless sooner terminated as provided herein, shall continue in effect for an initial term of Ten (10) years (the "Initial Term") from the DBO; provided, however, this Permit shall not be effective until the City has received the initial monthly MAG payment, proof of insurance, and the Security Deposit from Operator. Operator shall send the City written notice of the date it opens the Station for business.
- B. Extension Terms. If Operator is not in default, Operator may seek to extend the term of this Permit for up to two additional periods of five (5) years each (an "Extension Term"). In order to extend the term of this Permit, Operator shall send City a written request to extend the term at least sixty, but not more than one hundred twenty, days prior to the expiration date of the Initial or first Extension Term, as applicable. City shall not unreasonably deny, delay or condition its consent to Operator's extension request. Unless this Permit is amended in writing by the parties, Extension Terms shall be governed the same the terms, covenants, and conditions of this Permit as were applicable to the Initial Term, except as provided in Section 5.A.

4. USE OF PREMISES

- A. Authorized Uses. Operator shall use the Premises to construct, install, operate, repair, maintain and manage the Station, and for no other purpose without the prior written consent of the Director.
- B. Prohibited Uses. Operator shall not use or occupy, permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would make void or voidable any insurance then in force with respect thereto, which would make it impossible or financially prohibitive to obtain the insurance required to be furnished by or on behalf of City or Operator hereunder, which would constitute a public or private nuisance, or which would violate any applicable Federal, State, or local statutes, laws, ordinances, regulations or rules.
- C. Permits and Licenses. Operator, at Operator's expense, shall obtain and maintain in force and effect all permits and licenses necessary or appropriate to operate and maintain the Station.

5. FEES AND PAYMENTS

- A. Permit Fees. Operator, for the rights and privileges granted herein, shall pay the City, without notice, and free from any and all claims, deductions or set-offs against the City, as payment for each Contract Year during the Term hereof a Permit Fee equal to the greater of a Five Thousand Dollar (\$5,000) Minimum Annual Guaranteed Fee ("MAG") or a "Royalty" equal to five cents (\$0.05) for each GGE of CNG sold at the Station during such Contract year to Retail Customers.
 - (1) If the Term of this Permit is renewed under Section 3.B, the MAG for the first Extension Term shall be the greater of the MAG for the Initial Term, or ninety percent of the total Permit Fees payable to the City during the last Contract Year of the Initial Term. The Royalty for each Contract Year during the first Extension Term shall be seven cents (\$0.07) for each GGE of CNG sold at the Station to Retail Customers.
 - (2) If the Term of this Permit is renewed for a second Extension Term under Section 3.B, the MAG for the second Extension Term shall be equal the greater of the MAG for the first Extension Term, or ninety percent of the total Permit Fees payable to the City during the last Contract Year of the first Extension Term. The Royalty for each Contract Year during the second Extension Term shall be eight cents (\$0.08) for each GGE of CNG sold at the Station to Retail Customers.
- B. Payment of MAG. The annual MAG shall be payable to the City in twelve (12) equal monthly installments each without notice, demand, or set-off, on or before the first day of each month. The first installment shall be due and payable upon the Effective Date.
- C. Monthly Report. Within thirty (30) days after the end of each calendar month throughout the term of this Permit, Operator shall send the City a detailed statement of the amount of CNG sold at the Station in such month (expressed in GGEs), along with a calculation of the per-GGE Permit Fee attributable to such sales. If the amount of the Royalties attributable to CNG sales for such month exceeds the MAG paid by Operator for such month, Operator shall remit the additional Permit Fees to the City with its monthly report.
- D. Payment Terms. All Permit Fees payable to the City by Operator hereunder shall be delivered to the Department of Aviation, Attention: Accounts Receivable, Austin-Bergstrom International Airport, 3600 Presidential Boulevard, Suite 411, Austin, Texas 78719. The termination of this Permit, by the lapse of time or otherwise, shall not relieve Operator of its obligation to pay any Permit Fees that have accrued during the Term of this Permit or any extensions thereto. If any payment

required hereunder by Operator is not made when due, Operator shall pay the City a late payment penalty equal to five percent of the amount due. Thereafter, interest shall accrue on all late payments at the lesser of one and one-half percent (1.5%) per month or the highest amount permitted by law per month on the amount outstanding from the payment due date. If any check tendered by Operator in payment of Permit Fees or other charges under this Permit is not paid upon presentment by Operator's bank, the City may, upon written notice to Operator, require all future payment to be made by certified check, money order, or other means to ensure payment of good funds.

- E. Annual CPA Audit Report: Operator shall provide to the City an annual accounting of the Permit Fees paid to the City and the volume of CNG sold at the Station (expressed in GGEs) within ninety (90) days after the end of each Contract Year. For the purpose of the annual accounting, Operator shall furnish to the City an audited annual accounting statement of CNG sales and the Permit Fees (both MAG and Royalties) due, prepared by an independent Certified Public Accountant (CPA), in accordance with generally accepted auditing standards (GAAP). The audit will express an opinion to the City whether (1) the statement of sales and Permit Fees due have been accurately calculated and reported according to the terms of the Permit, (2) an adequate system of internal control is in place to provide assurance that sales have been accurately accounted for, and (3) Permit Fees due have been collected, calculated, and paid according to the terms of the Permit. In the event the annual report shows that additional Permit Fees are due the City, Operator shall submit payment of the additional Permit Fees to the City with the annual report.

- F. Security Deposit.

- 1) Upon execution of this Permit, Operator shall deposit with City the sum of Two Thousand Dollars (**\$2000.00**) being due and payable by Operator under this Permit, to be held by City as security for Operator's full, faithful, and timely performance of its obligations under this Permit (the "Security Deposit"). The Security Deposit shall be in the form of cash, or an irrevocable letter of credit. The Security Deposit shall not be considered an advance payment of Permit Fees, or a measure of damages in the event of default by Operator. If the Security Deposit is in the form of cash, City shall not be required to earn or pay interest to Operator on the Security Deposit, or to keep the Security Deposit in a separate fund apart from other City funds. If the Security Deposit is in the form of a letter of credit, the credit must be in a form, and drawn on a bank, reasonably acceptable to City, and must remain in effect throughout the term of the Permit and for a period of sixty (60) days thereafter. If a letter of credit expires in accordance with its terms prior to such time, Operator must provide a replacement letter of credit to City at least thirty (30) days before its expiration date.
- 2) As the Permit Fee changes during the Term of this Lease, the City shall periodically review the adequacy of the Security Deposit, and may, by written notice to Operator, reasonably increase the amount of the Security Deposit to equal four (4) months estimated total Permit Fees payable by Operator under this Lease. Such notice shall include a calculation of the revised Security Deposit. Operator shall within twenty (20) business days of receipt of such written notice from the City increasing the Security Deposit, deposit the additional amount with the City by certified check or supplemental letter of credit.
- 3) City shall have the right, but not the obligation, to apply all or any part of the Security Deposit to cure any default of Operator under this Permit, including, but not limited to, (a) any arrearages of Permit Fees, (b) the cost to repair or restore any damage to the Premises caused by Operator, or (c) any other amounts due from Operator under this Permit. In such

- 4) City shall return the Security Deposit to Operator, less any amounts applied by City under subsection (3), within sixty (60) days after the later of the termination date, or the date that Operator surrenders possession of the Station to City.
- G. Record Retention. Operator shall keep true, accurate and complete books and records, in accordance with GAAP, and in a form otherwise satisfactory to the City, throughout the Term of this Permit and any extension or renewal thereof. Operator's books and records shall be maintained in sufficient detail to fully and properly account for all sales, refunds, rebates, discounts, voids, and other transactions which relate to the amounts reported to the City as sales of CNG. Operator shall maintain its books and records for additional periods, until an audit of the Agreement is complete, and all issues arising from such audit are resolved, or not less than three (3) years following expiration of this Agreement, whichever is the later. Operator shall make all such books and records available to the City in Austin, Texas within ten business days of receipt of written request from the City, or Operator shall pay the expenses (including without limitation, travel, lodging, and meals) incurred by the City to examine the books and records in another location.
- H. Audit of Books and Records.
- 1) Upon written notice at any time or times during the Term of the Permit or within three (3) years after the end of any Contract Year, the City may inspect, reproduce and audit the books and records of Operator relating to its operation at the Airport. If, as a result of such inspection and audit, it is established that additional Permit Fees are due the City, Operator shall, upon written notice by the City, pay such additional Permit Fees, plus interest, calculated at the Contract Rate, within ten (10) days of written notice. If, on the other hand, such audit determines that Operator has overpaid the Permit Fees due the City, the City shall refund to Operator the amount of such overpayment. Except at the end of the Term of the Permit, a refund by the City under this Section shall be in the form of a credit against future Permit Fees.
 - 2) If the results of the audit reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by Operator and Gross Receipts as determined by audit, the cost of the audit shall be paid by Operator as Additional Permit Fees.
- I. Cash Control Structure.
- 1) Operator shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with Operator's authority, and that financial records are reliable for the purposes of preparing financial statements. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures. Operator shall retain supporting documentation for all refunds and voided transactions.
 - 2) The City, at its expense, shall have the right to monitor and test all of Operator's cash and internal controls and systems. Operator shall provide to the City, upon request, any non-privileged report or certification prepared by, or on behalf of, Operator concerning the adequacy of Operator's internal

controls, including reports that Operator may be required to file under Sections 302 or 404 of the Sarbanes Oxley Act of 2002.

6. TAXES

- A. Operator shall pay when due all taxes, or cause to be paid, all taxes and governmental fees levied against Operator or the City concerning the Premises, the Station, or that arise from or pertain to this Permit, including, but not limited to, any or all fuel sales, occupation, or excise taxes imposed on the sale of CNG at the Station (collectively, "Taxes"). Operator shall not permit any liens to attach to any property of the City by reason of unpaid Taxes, and shall promptly cause any liens that are attached to be released and discharged. Operator shall deliver to City evidence of timely payment of all Taxes.
- B. Operator shall, in accordance with Applicable Law, collect and remit federal, state and local taxes, including fuel use taxes, on CNG sold at the Station, subject to certain exemptions. The City is exempt from such applicable excise, sales and use taxes related to purchases of CNG for City CNG Vehicles under this Permit, and shall furnish Operator with a tax exemption certification upon request. The City will notify Operator in writing if the City loses its tax exempt status.

7. OPERATOR RESPONSIBILITIES

Operator shall, during the term of this Permit, provide the following services at Operator's cost:

- A. CNG. Operator shall purchase, compress, and cause to be delivered to the Station all natural gas sold or dispensed at the Station. Operator shall ensure that all CNG sold at the Station meets minimum industry standards and governmental requirements for CNG motor fuel.
- B. City CNG Vehicles. Operator shall provide the Station with fuel for CNG Vehicles owned or operated by or on behalf of the City, including shuttle buses operated by the Department's Parking Management Company. CNG used to fuel City CNG Vehicles shall be sold at the discounted rate described in **Exhibit B**. The City shall use CNG purchased under this Permit solely to fuel City CNG Vehicles. Unless expressly authorized by the City in writing, (1) Operator shall not bill the City for CNG sold to the Department's Parking Management Company; but shall bill the Parking Management company directly, and (2) the City shall not be responsible for paying Operator for CNG sold to the Department's Parking Management Company
- C. Retail Customer CNG Vehicles. CE shall provide the Station with CNG to fuel Retail Customers' CNG Vehicles and will charge the third-party users at rates set in CE's discretion, subject to Applicable Law and the provisions of this Permit.
- D. Credit Cards. Operator shall accept the following major forms of fleet and credit card payments: MasterCard, Visa, Voyager, Wright Express and Clean Energy's own credit card. Operator, at no cost to the City, shall enter into contracts necessary to accept and process such credit cards as a method of payment for CNG.
- E. Automated Payment System. Operator shall install, at its sole expense, an automated, unattended point of sale system (the "System") on the Station CNG dispensers upon which Operator shall cause to be recorded each and every transaction made in, on, about, or from the Station. Operator must be able to use System data to differentiate between taxable and tax-exempt transactions and charge the correct amount, including fuel taxes, as applicable, to each class of customer. Operator, at Operator's sole expense, shall perform all routine and preventive maintenance on the System.

- F. Customer Comments and Complaints Program. Operator shall handle and report to the City, in a manner satisfactory to the City, all Customer comments and complaints. Operator shall promptly report to the Executive Director any and all claims made for loss or damage to vehicles or other property in connection with the operation of the Station. Operator shall deliver documentation summarizing any complaint received orally and a copy of any written complaint to the Executive Director within twenty-four (24) hours after Operator's receipt of the complaint and shall promptly prepare a written response to any written complaint for the Executive Director's review. In such written response, Operator shall make a good-faith effort to explain, resolve or rectify the cause of the complaint.
- G. Emergency Procedures. Operator must develop and post written emergency procedures on each of its CNG dispensers.
- H. Customer Training. Operator shall provide training to the City and other customers regarding the operation of the CNG dispensers as necessary for the safe and proper operation of Station. Operator shall adopt and implement appropriate procedures, such as access cards, PIN numbers, and other means to prevent untrained users from operating the fuel dispensing equipment at the Station.
- I. Software. Operator shall provide all software necessary to operate a self service, pay-at-the-pump CNG dispenser. Operator shall have technical support personnel available at all times to diagnose and correct any software problems, as necessary.
- J. Customer Billing. Operator shall invoice for and collect all amounts owed by CNG customers for fuel purchased from the Station, which are not payable at the time and place of the sale.
- K. Regulatory Compliance. Operator shall strictly comply with all applicable laws, statutes, ordinances, rules and regulations related to the operation and maintenance of the Station.
- L. Safety. Operator shall develop a safety manual to assure the safe operation of the Station and shall institute safety programs as provided in the safety manual. Operator shall deliver a copy of the safety manual to the Director.
- M. Signage. Operator shall procure and install appropriate signage for the Station; provided, however, that the size, location, and layout of all signs are subject to the prior written consent of the Director.
- N. Marketing. Operator shall market and advertise the Station to Retail Customers in the Austin metropolitan area in order to maximize its sales and revenue potential.
- O. Management Reports. Operator shall provide the City with such information and reports on the operation of the Station as the Director may reasonably request.
- P. Hours of Operations. Except, as otherwise directed in writing by the Director, Operator shall operate the Station twenty-four (24) hours per day, or on such schedule as determined by the City, every day of the year (or as directed by the City) for so long as this Permit remains in effect.

8. UTILITIES

Operator shall pay or cause to be paid all fees and charges for natural gas, electricity, telephone and other communication services, water, wastewater, drainage, and all other utilities and similar services rendered or supplied to the Station. Operator, at Operator's expense, shall extend utilities (water, wastewater, electricity, telecommunications and natural gas) from City's designated utility connection points to the Station. Operator shall establish separate utility accounts for the Station in Operator's name. A natural gas main runs along Spirit of Texas Drive. The City grants Operator the right to install, operate and maintain an

underground line from the Station to a point of connection with the gas main approved by the gas utility and the Department in accordance with Airport Design Review Process. Operator, at its sole cost, shall connect into the mains and the utility lines as specified in the Design and Development Guide. All utilities to the Premises shall be separately metered wherever practical. Charges for those utilities not separately metered shall be prorated.

9. MAINTENANCE

- A. Station Maintenance. Operator, at Operator's sole expense, shall provide all necessary repair services and routine, preventative, and remedial maintenance for the Station. Operator shall have maintenance and repair personnel on call 24 hours a day, every day of the year, to handle emergency or unscheduled repairs and maintenance. Operator shall provide an emergency contact telephone number to the City. In the event of an emergency at the Station, Operator shall respond as soon as is commercially reasonable following notification by the City, and will restore the operation of the Station as soon as is commercially reasonable. The Parties shall mutually agree on scheduling maintenance services that require the Station to be out of operation for more than four (4) hours.
- B. Premises Maintenance. Operator, at Operator's sole expense, shall maintain and take good care of the Premises and keep the Premises in good order, repair, and condition at all times. Operator shall mow and maintain the grass and landscaping within the Premises. Operator shall maintain and repair all utility lines, fixtures and equipment on the Premises, except to the extent maintenance and repair is the obligation of the utility serving the Premises. Operator shall provide, at its sole expense, all waste collection, handling, and disposal services necessary or appropriate for the Premises to keep the Premises free from trash, garbage and other refuse. Operator shall provide, or cause to be provided, proper receptacles for trash, garbage and other refuse generated on or from business operations on the Premises.

10. OPERATOR'S CONSTRUCTION OBLIGATION

- A. Operator's Construction Obligation. Operator, at Operator's sole expense, shall design, install and construct the Station in accordance with Operator's Scope of Work and Construction Schedule attached hereto, and incorporated herein as **Exhibit C** ("Operator's Construction Obligation & Schedule"). Operator may contract with an affiliate or other qualified contractor(s) for the design, installation and construction of the Station. Operator's Construction Obligation shall include the Station and all associated motor vehicle/truck parking, landscaping, site infrastructure, and utility extensions.
- B. Construction Standards. Construction of Station must comply with the following requirements.
 - (1) The Station shall be constructed in a good and workmanlike manner, utilizing good industry practice for the type of work in question, and in compliance with Applicable Law, including all applicable building codes.
 - (2) Station shall be designed and constructed in accordance with the applicable provisions of the Austin-Bergstrom International Airport Design Guidelines, other applicable Airport rules and regulations, Federal Aviation Regulations governing the height and location of structures affecting airspace at the Airport as set forth in 14 CFR Part 77, and City Code Chapter 25-13 (Airport Hazard and Compatible Use Regulations).
 - (3) All plans, drawings and specifications, preliminary and final, must be prepared by registered architects or engineers licensed to practice in the State of Texas.

- (4) After commencement, the construction of the Station shall be prosecuted with due diligence to its completion.
- C. Design/Construction Review. Operator may not commence construction of the Station until the plans and designs for such improvements have been submitted to, and approved by, the Director. The process for seeking and obtaining the approval of the Director is set forth in the City of Austin Airport Design Review Policies and Procedures – Policy & Procedures for the ABIA Design Review Committee. As of the Effective Date, the Design Review Policies are posted on City's website at <http://www.ci.austin.tx.us/austinairport/downloads/drcpolicies2.pdf>. The review of plans or designs by the Director is only for compliance with this Permit, and not for architectural or engineering design; and the City assumes no liability or responsibility therefor, or for any defect in the design or plan, or in any work performed pursuant to such plans or designs.
- (1) During the course of the construction of the Station, City and its architects, engineers, agents, and employees may enter upon and inspect the Premises for the purpose of seeing that the work conforms with the requirements of this Permit and the plans and specifications provided to City.
 - (2) Operator shall designate an on-site representative who shall be available through final completion of the Station to coordinate all design and construction activities, and to meet with City's representatives as necessary. In addition a senior executive of Operator shall visit the construction site at least bi-monthly. Operator shall submit written progress reports to the Director at least monthly. The reports shall describe significant achievements and problems that could affect the construction schedule or cost. The reports shall be sufficiently detailed to demonstrate compliance with approved plans, and this Permit. Operator shall also provide qualified safety personnel to be present on the Premises at all times during construction.
 - (3) Within thirty (30) days following substantial completion of construction of the Station, Operator shall furnish the Director with (a) a certificate from Operator's architect or engineer certifying that the construction has been completed in accordance with the approved plans and specifications; (b) a complete set of as-built Mylar, blue print and electronic drawings in AutoCAD (current release), or comparable program reasonably acceptable to City, of the Station; (c) a detailed listing of project costs including copies of invoices and paid checks to establish the verified development cost of the Station; (d) copies of all operation and maintenance manuals and warranties on the Station or any component part thereof; and (e) a list of all maintenance contractors and contracts for the Station, or any part thereof. If Operator does not provide as-built plans within the designated period, Operator shall pay City liquidated damages in the amount of Ten Thousand Dollars (\$10,000.00) to cover City's cost of obtaining the same. Operator covenants that City may use all plans and specifications submitted by Operator pursuant to this Permit without payment to Operator or any other person, for purposes relevant to and consistent with this Permit.
- D. Governmental Authorizations, Insurance and Bonds. The Director's Notice to Proceed shall not be given until the following requirements have been satisfied:
- (1) The Director has approved Operator's plans and designs as provided in Section 10.C;
 - (2) All licenses, permits, approvals, or other governmental authorizations have been issued.

- (3) Operator has delivered to the City for approval and the City has approved certificates of insurance, in a form and for coverage amounts satisfactory to City, evidencing Operator's construction contractor's "all risk" type Builders Risk insurance coverage, Commercial General Liability Insurance coverage, Business Automobile Liability Insurance Coverage, and Workers' Compensation Insurance Coverage.
- (4) Operator has delivered to City valid dual obligee performance and payment bonds without expense to City. The bonds shall be maintained and kept in full force and effect until all work required to construct the Station is complete, the Station have been accepted, and all warranty periods have expired. The bonds shall be in a form, and issued by a surety licensed to transact business in the State of Texas, reasonably acceptable to the City. The bonds shall be in a penal amount equal to the full amount of all contract(s) required for the construction of the Station. The performance bond shall be for the protection of City, and ensure the full faithful and timely performance by the Operator of its obligations to construct the Station in accordance with the plans, specifications and contract documents. The payment bond shall guarantee the prompt payment by Operator or its contractor to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by any contractor, subcontractor(s), and suppliers in the construction of the Station, and shall protect City from any liability, losses, or damages arising there from.

E. Project Commencement and Completion.

- (1) Except for delays caused by force majeure, Operator shall cause construction of the Station to be commenced promptly following Operator's receipt of the Notice to Proceed. Except for delays caused by force majeure, Operator shall thereafter cause all elements of such construction to be prosecuted to completion with due diligence, in accordance with Operator's Construction Obligation and Schedule.
- (2) Unless a delay is caused by an event of Force Majeure, the Operator must submit and the Director must approve in writing any request of Operator for an extension of time to perform its obligations under this Section.
- (3) The Station shall be substantially complete and open for business no later than one year after the date of the Notice to Proceed or earlier as otherwise provided in Operator's Construction Obligation and Schedule.

F. Construction Parking and Staging Areas. The City shall designate a haul route and staging area for the project. The Operator shall not use, or permit its contractors to use, any area for staging or parking not so designated by the City.

G. No Liens. Operator shall be solely responsible for payment to all contractors and workers for all elements of construction, modification, or demolition of the Station, and shall keep the Premises free and clear of all liens resulting from any work thereon, or the furnishing of labor or materials, by or on behalf of Operator. If any such lien is filed or asserted, Operator shall promptly cause the same to be released within thirty (30) days, or shall post a surety bond for payment of such lien claims that causes the lien to be removed as an encumbrance on the Premises or any portion thereof. OPERATOR MAY CONTEST THE CORRECTNESS OR VALIDITY OF ANY SUCH LIEN, BUT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY FROM ANY AND ALL SUCH LIEN CLAIMS.

- H. M/WBE Procurement Program. Operator shall develop and implement a Minority-Owned and Female-Owned Business Enterprise Procurement Program ("M/WBE Program") for the design and construction of the Station, consistent with Applicable Law. The M/WBE Program shall be incorporated into and made a part of this Permit for all purposes. Operator shall substantially comply with the requirements of the City of Austin Code Chapter 2-9 et seq. in the design and construction of the Station. Operator shall provide City with a copy of Operator's M/WBE Program, and with a simultaneous copy of all M/WBE reports submitted by Operator to the City of Austin Department of Small and Minority Business Resources and other applicable Governmental Authorities. A violation by Operator of the M/WBE Program shall be an Operator Default under Section 22 A.

In the design and construction of the Station (including utility extensions) on the Premises, Operator shall meet the annual, ethnic-specific design and construction goals contained in City Code Chapter 2-9(A) and 2-9(B), respectively, or demonstrate a good faith effort to meet the goals. Currently the goals are as follows:

	Professional Services Participation Goals	Construction Participation Goals
African-American-owned Business Enterprises	1.9%	1.7%
Hispanic-owned Business Enterprises	9.0%	9.7%
Asian-American and Native American-owned Business Enterprises	4.9%	2.3%
Women-owned Business Enterprises	15.8%	13.8%

The City of Austin Department of Small and Minority Business Resources ("SMBR") is available to assist Operator in identifying certified minority-owned and women-owned firms to meet the participation goals. SMBR can provide a list of certified firms to the Operator from which the Operator can solicit participation in the design and construction of the Station. SMBR is also available to assist Operator in scheduling outreach meetings with M/WBE firms prior to the time that Operator begins the design and construction phases of the redevelopment.

Operator shall provide quarterly reports on progress toward meeting the M/WBE participation goals on forms to be provided by the City. Operator may be required to provide periodic reports to the City's Small and Minority Business Resource Citizen Advisory Committee regarding M/WBE participation.

11. COMMUNICATION SERVICES

- A. Telecommunications Services. All external telecommunications providers shall terminate at the demarcation point located in the City's Communications Center. Operator shall use the City's fiber optics and Copper Premise Distribution System (PDS) to connect to the demarcation point. Operator shall pay reasonable fees comparable to those levied for similar installations at Airport for its PDS connection(s).
- B. Telephone Services. Operator may either use the Aviation Department's telephone system or select another telephone service provider. To participate in the Airport Shared Telephone System (STS) program, Operator must use the Aviation provided telephone sets. Operator shall have the option of purchasing its own telephone switch and related equipment to connect to the PDS and the Airport telecommunications demarcation point. Operator furnished telephone switches and equipment shall be located at the Station.

- C. Telephone Service Charges. All telephone service charges, including installation, maintenance, moves, adds, changes, long distance and local provider service shall be Operator's sole responsibility. Operator shall not enter into any telephone agreement that conflicts with the City's Minimum Point of Entry, the telephone demarcation point, or STS.
- D. Data Communications Service. The PDS carries data transmission services throughout the Airport site. Operator, at Operator's expense, must provide all equipment necessary to connect to the PDS. All data transmission and switching equipment used must comply with City's specifications. Operator shall pay the fees established by the City for the use of the PDS for data transmission. Shared Telephone Services include data transmission lines (Frame Relay, ISDN, and T1) or Operator may choose to use the PDS to connect to an alternate provider at the demarcation point. All data communication service charges, including installation, maintenance, moves, adds, changes, shall be borne by Operator.
- E. Television Service. Operator may not install satellite dishes, antennae or similar receiving devices on the Premises.
- F. Invoicing and Payment. Operator must apply for and sign the Airport Shared Telephone System Terms of Usage. Operator understands that it shall be billed monthly for its PDS and STS charges under this section. Payment for PDS and STS charges is not included in the Fees and must be paid to Operator as provided in the STS Terms of Usage.
- G. Pay Telephones. Operator shall not install any pay telephones in the Station without the prior written consent of the Director.
- H. Computer Networks. Operator shall, at its sole expense, procure, install and maintain all computer networks, if any, within the Station.

12. ENVIRONMENTAL CONDITION OF PREMISES

For a period of ninety (90) days from the Effective Date, Operator shall have the right to reasonably inspect and conduct an environmental assessment of the Premises. If the inspection or assessment indicates the presence of Hazardous Materials (as defined in Section 13, below) or Hazardous Materials are discovered on the site at any time during the term hereof that were not released or brought on to the Premises by Operator, Operator, at its option, may either accept the Premises AS IS, and assume the responsibility to remediate the Hazardous Materials at Operator's expense to the extent necessary to install, construct and/or operate the Station, or Operator may terminate this Lease in whole without penalty or further obligation, or with the written consent of the Director, amend this Lease to either (a) relocate the Premises, or (b) delete the contaminated areas from the Premises. City shall provide Operator with a copy of any prior environmental assessments of the Premises in City's possession. Operator shall give City prior written notice of any planned environmental assessments, including the scope of the assessment and the specific sites or locations to be investigated. Operator shall provide City with a copy of all environmental assessments of the Premises or the Airport performed by Operator or on its behalf.

13. ENVIRONMENTAL COMPLIANCE

- A. Definitions. In this Section:
 - (1) "Environmental Laws" - shall refer to and include, without limitation, all Federal, State, City, and local statutes, laws, ordinances, rules and regulations, now or hereafter in effect, and as amended from time to time, related to pollution or the protection of the environment, including those related to emissions, discharges, releases or threatened releases of or the use, handling, treatment, storage, discharge, disposal, or transportation of Hazardous

Materials. Environmental Laws, specifically include but are not limited to, the National Environmental Policy Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Substances Act, the Toxic Substances Control Act, the Clean Water Act, the Superfund Amendments and Reauthorization Act, the Clean Air Act, and association amendments, the Occupational Safety and Health Administration Hazard Communication Standards, the Texas Hazardous Substances Act, and the Texas Water Quality Control Act.

- (2) "Hazardous Materials" - shall refer to, and include, without limitation, all substances whose use, handling, treatment, storage, disposal, discharge, or transportation is governed, controlled, restricted, or regulated by Environmental Laws, that have been defined, designated or listed by any responsible regulatory agency as being hazardous, toxic, radioactive, or that may present an actual or potential hazard to human health or the environment if improperly used, handled, treated, stored, disposed, discharged, generated or released. Hazardous Materials specifically include, without limitation, asbestos and asbestos-containing-materials, petroleum products, solvents, and pesticides.
- (3) "Environmental Claims" – shall refer to, and include, without limitation, all claims, demands, suits, actions, judgments, and liability for: (i) removal, remediation, assessment, transportation, testing and disposal of Hazardous Materials as directed by any government agency, court order, or Environmental Law; (ii) bodily injury, or death; (iii) damage to or loss of use of property of any person; (iv) injury to natural resources; (v) fines, costs, fees, assessments, taxes, demands orders, directives or any other requirements imposed in any manner by any governmental agency under Environmental Laws; and (vi) costs and expenses of cleanup, remediation, assessment testing, investigation, transportation and disposal of a Hazardous Material spill, release, or discharge.
- (4) "Environmental Condition" shall mean any condition with respect to the soil, surface waters, groundwaters, surface or subsurface strata, ambient air or other environmental medium on or off the Station, whether or not yet discovered, which could or does result in any Environmental Claim to or against Operator or City by any third party (including, without limitation, any governmental entity), including, without limitation, any condition resulting from the activities, operation or business of any other property lessee, permittee, licensee, City or operator on, off or in the vicinity of the Station.
- (5) "City" – shall include the City of Austin and its elected and non-elected officials, officers, agents, employees, contractors, successors, and assigns.
- (6) "Operator" - shall include the Operator's directors, officers, agents, employees, contractors, customers, invitees, successors, and assigns.

- B. Compliance. In its operations at the Airport, Operator shall strictly comply with all generally accepted industry environmental practices/standards, applicable Environmental Laws, and the applicable Airport Environmental Policies/ Procedures which are included in the Storm Water Pollution Prevention Plan ("SWPPP") and Spill Response Plan) which is incorporated herein by reference. On the Effective Date, the SWPPP is posted on City's website at www.ci.austin.tx.us/austinairport/swppp.htm. Without limiting the generality of the foregoing provision, Operator shall not use or store Hazardous Materials on or at the Airport except as reasonably necessary in the ordinary course of Operator's permitted activities at the Airport, and then only if such Hazardous Materials are properly labeled and contained, and notice of and a copy

of the current material safety data sheet is provided to the City for each such Hazardous Material. Prior to commencing operations at the Airport, Operator will complete an Airport baseline environmental questionnaire. Operator shall not discharge, release, or dispose of any Hazardous Materials on the Airport or surrounding air, lands or waters, except as allowed under applicable Environmental Laws. Operator shall promptly notify the City of any Hazardous Material spills, releases, or other discharges by Operator at the Airport and promptly abate, remediate, and remove any the same in accordance with applicable Environmental Laws. Operator shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries, or notices relating to the environmental condition of the Airport, or any alleged material noncompliance with Environmental laws by Operator at the Airport within ten (10) days after such documents are generated by or received by Operator. If Operator uses, handles, treats or stores Hazardous Materials at the Airport, Operator shall have a contract in place with an EPA or TCEQ approved waste transport or disposal company, and shall identify and retain spill response contractors to assist with spill response and facilitate waste characterization, transport and disposal. Complete records of all disposal manifests, receipts and other documentation shall be retained by the Operator as required under applicable Environmental Laws and made available to City for review upon request. City shall have the right at any time, upon reasonable written notice to Operator, to enter the Station to inspect, take samples for testing, and otherwise investigate the Station for the presence of Hazardous Materials.

- C. Responsibility. Operator's Hazardous Materials shall be the responsibility of Operator. Operator shall be liable for and responsible to pay all Environmental Claims that arise out of or are caused in whole or in part from Operator's use, handling, treatment, storage, disposal, discharge, or transportation of Hazardous Materials on or at the Airport, the violation of any Environmental Law by Operator, or the failure of Operator to comply with the terms, conditions and covenants of this Section. To the extent City incurs any costs or expenses (including attorney, consultant and expert witness fees) arising from Operator's use, handling, treatment, storage, discharge, disposal, or transportation of Hazardous Materials on the Airport, Operator shall promptly reimburse the City for such reasonable costs upon demand. Operator shall comply with all applicable reporting requirements under Environmental Laws with respect to spills, releases, or discharges of Hazardous Materials by Operator at the Airport.
- D. Indemnity. IN ADDITION TO ANY OTHER INDEMNITIES IN THIS PERMIT, BUT EXCEPT AS OTHERWISE PROVIDED HEREIN, OPERATOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY FROM ANY AND ALL ENVIRONMENTAL CLAIMS (INCLUDING REASONABLE ATTORNEY'S FEES, LITIGATION AND INVESTIGATION EXPENSES, AND COURT COSTS) TO THE EXTENT ARISING OUT OF OR RESULTING FROM OPERATOR'S USE, HANDLING, TREATMENT, STORAGE, DISPOSAL, DISCHARGE, OR TRANSPORTATION OF HAZARDOUS MATERIALS ON THE STATION OR AT THE AIRPORT DURING THE TERM OF THIS PERMIT, THE VIOLATION OF ANY ENVIRONMENTAL LAW BY OPERATOR PERTAINING TO OPERATOR'S USE OR OCCUPANCY OF THE STATION DURING THE TERMS OF THIS PERMIT, OR THE FAILURE OF OPERATOR TO COMPLY WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS SECTION.
- E. Removal. Prior to the end of the term or earlier termination of this Permit, Operator shall remove or remediate in accordance with applicable Environmental Laws and the Airport Environmental Rules and Policies, all of Operator's Hazardous Materials from the Station, the Airport, and surrounding lands and waters.

- F. Compliance with Federal and State Stormwater Requirements. Operator acknowledges that the Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES") and Federal Stormwater Regulations (40 CFR Part 122) and the Texas Pollution Discharge Elimination Program ("TPDES"). In its operations at the Airport, Operator shall comply with all applicable provisions of NPDES, TPDES, Federal and State Stormwater Regulations, and the SWPPP, as they may be amended from time to time.
- G. Natural Resource and Energy Conservation and Management. Operator shall comply with all Applicable Laws, and Airport Rules and Regulations pertaining to recycling and energy or natural resource conservation and management at the Airport. The City has, or will in the future establish and implement an Environmental Management System for the Airport. Operator shall fully cooperate with City in the implementation and enforcement of all such conservation and management policies and programs.
- H. Survival. The covenants, conditions, and indemnities in this Section shall survive termination of this Permit. Operator shall expressly include the provisions of this Section in all subleases.

14. INSURANCE

Operator shall deliver certificates of insurance, for itself and its contractors, if any, verifying the coverage listed below to the Director prior to commencing operations pursuant to the Permit. If coverage period ends during the Term of the Permit, Operator shall, prior to the end of the coverage period, forward a new Certificate of Insurance to the City as verification of continuing coverage for the duration of the Term of the Permit.

- A. Workers' Compensation and Employers' Liability. Worker's compensation insurance shall be provided with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code Title 5) and minimum policy limits for employers' liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The following endorsements shall be added to the policy:
- (1) Thirty (30)-day notice of cancellation in favor of the City of Austin, Form WC 420601
- B. Commercial General Liability Insurance. Commercial General Liability Insurance shall be provided with a minimum bodily injury and property damage per occurrence limit of \$5,000,000.00 for coverage A (Bodily Injury and Property Damage) and coverage B (Personal and Advertising Injury); and \$5,000,000.00 product/completed operations minimum limit of liability. This policy shall contain no exclusions or restrictions related to losses arising from the release of CNG. The policy shall contain the following provisions:
- (1) Blanket contractual liability coverage for liability assumed under this contract
 - (2) Medical expense coverage with a minimum limit of \$1,000.00, any one person
 - (3) Fire Legal Liability with a minimum limit of \$50,000.00
 - (4) City of Austin listed as additional insured
 - (5) Thirty (30) day notice of cancellation in favor of the City of Austin, Form CG 0205
 - (6) Waiver of subrogation and recovery in favor of the City of Austin, Form CG 2404
- C. Business Automobile Liability Insurance. Business automobile liability insurance shall be provided for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000. The following endorsements shall be added to the policy:

- (1) City of Austin named as additional insured, Form TE 9901B
 - (2) Thirty (30-day Notice of Cancellation in favor of the City, Form TE 0202A
 - (3) Waiver of subrogation and recovery in favor of the City of Austin, Form TE 2046A
- D. Insurance Ratings. Operator's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- E. General Requirements.
- (1) Approval of insurance by the City and the required minimums shall not relieve or decrease the liability or responsibility of the Operator hereunder and shall not be construed to be a limitation of liability on the part of the Operator.
 - (2) All endorsements naming the City as additional insured, i.e. waivers, and notices of cancellation endorsements as well as Certificates of Insurance shall indicate:

Austin-Bergstrom International Airport
 Department of Aviation
 3600 Presidential Boulevard, Suite 411
 Austin, Texas 78719
 - (3) The "other" insurance clause shall not apply to the City where the City of Austin is additional insured shown on any policy. It is intended that policies required in the Permit covering the City and the Operator, shall be considered primary coverage as applicable for operations and services provided under this Permit.
 - (4) If insurance policies are not written for amounts specified above, the Operator shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
 - (5) The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies or if the change would result in the imposition of an additional premium or cost which neither the Operator or the City is willing to assume.
 - (6) The City reserves the right to review insurance requirements set forth during the Term of this Permit and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Operator.
 - (7) The Operator shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Permit that is related to Operator's operations at the Airport.
 - (8) Operator shall be responsible for deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificates of insurance.

- F. The following requirements pertain to all contractors (a "Contractor") employed by Operator for the construction of the Station.

Each of the requirements applicable to Operator shall apply to Contractors providing construction services, except that Contractors providing construction services must obtain the following coverages in addition to the coverages provided under Section 14 B above, and provide an acceptable Certificate of Insurance evidencing such coverage:

Property insurance coverage/Builders Risk on an "All Risk of Physical Loss" form for 100% of the value of the Station. Coverage shall include but not be limited to fire, wind, hail, theft, vandalism and malicious mischief. The coverage shall be written on a replacement cost basis. The proceeds from such insurance shall be used to restore the Station to their original condition in the event of a covered loss.

- G. The following requirements pertain to contractors providing professional services for the Project.

Each of the requirements applicable to Contractors providing construction services shall apply to Contractors providing professional services except for the Builder's Risk insurance and the Property Damage Coverage, which do not apply; and the per occurrence limit of \$5,000,000 under Section 14 B is reduced to \$1,000,000. Professional services include Architectural, Engineering and Quantity Surveying services. Contractors providing professional services must also obtain the following coverages, and provide an acceptable Certificate of Insurance evidencing such coverage:

Professional Liability Insurance with a minimum limit of ONE MILLION dollars (\$1,000,000.00) per claim and in aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy shall provide for 30 day notice of cancellation in favor of City.

15. INDEMNITY

- A. Indemnity. OPERATOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS"), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (A) ANY BREACH OF THIS PERMIT BY OPERATOR, ITS AGENTS, EMPLOYEES, SUBTENANTS, OR CONTRACTORS, (COLLECTIVELY THE "OPERATOR PARTIES") (B) ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE OPERATOR PARTIES HEREUNDER, (C) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, OF THE OPERATOR PARTIES IN CONNECTION WITH THIS PERMIT, THE PREMISES, OR THE CONSTRUCTION, DEVELOPMENT, MAINTENANCE, REPAIR, OPERATION OR USE OF THE STATION. OPERATOR IS NOT EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS SECTION TO THE EXTENT A CLAIM ARISES OUT OF OR IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE TENANT PARTIES, CONCURRENT WITH THAT OF THE INDEMNIFIED PARTIES. OPERATOR SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. MAINTENANCE OF THE INSURANCE REQUIRED UNDER THIS PERMIT SHALL NOT AFFECT OPERATOR'S INDEMNITY OBLIGATIONS. OPERATOR MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF CITY OR OPERATOR, AS OPERATOR MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY OPERATOR AND OPERATOR SHALL MAINTAIN ADEQUATE INSURANCE TO COVER ANY LOSS(ES) WHICH MIGHT BE INCURRED IF

- B. Waiver of Consequential Damages. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE, DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF OPERATOR'S CUSTOMERS, SUBTENANTS, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.
- C. Claims Against Operator. In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Operator arising out of or concerning this Permit, the Premises, or the Station, the Operator shall give written notice thereof, to the City within two (2) working days after being notified of such claim, demand, suit, or action. Such notice shall enclose a true copy of all written claims, and if the claim is not written or the information is not discernable from the written claim, state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the Austin City Attorney, 301 West 2nd Street, Austin, Texas 78701, and to City.

16. LAWS, AGREEMENTS AND GRANT CONDITIONS

- A. Grant Assurances. This Permit is subject to the provisions of any agreement heretofore made between the City and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, or the expenditure of federal funds for the development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the FAA's Airport Improvement Program, or in order to impose or use passenger facilities charges under 49 U.S.C. § 40117.
- B. Amendment. In the event that the FAA, TSA, or other Governmental Authority shall require any modifications or changes in this Permit as a condition precedent to the granting of funds for the improvement of the Airport, or to impose or use passenger Station charges under 49 U.S.C. § 40117, or if it is necessary to modify this Permit to comply with the requirements of Applicable Law, orders and decisions of a Court, the FAA, TSA, or other Governmental Authority, the City may unilaterally modify this Permit, upon advice of its legal counsel, as may reasonably be required to obtain such funds or comply with law. Nothing herein shall preclude Operator from contesting such orders or decisions, but Operator shall abide by the unilateral modification by the City, until or unless rescinded, overturned, or if stayed, for the duration of the stay. In no event will Operator be required, pursuant to this paragraph, to pay Permit Fees greater than specified herein.
- C. National Emergencies. This Permit shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during a time of war or national emergency.
- D. Non-Discrimination and Affirmative Action. Operator covenants that it shall comply fully with applicable laws, regulations and building codes governing non-discrimination in public accommodations and commercial Station, including without limitation the requirements of the

Americans with Disabilities Act and all regulations thereunder, and that the premises shall remain in compliance throughout the term of this Permit. In the use and occupation of the Airport, Operator shall not unlawfully discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Operator shall not, on the grounds of race, color, religion, sex, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Federal Aviation Regulations, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and Section 15-17 of the City's Code of Ordinances. Without limiting the generality of the foregoing, Operator agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, or age. Operator agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Operator agrees to post, in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

- E. Public Accommodation Laws. Operator covenants that it shall comply fully with applicable laws, regulations and building codes governing non-discrimination in public accommodations and commercial Station, including without limitation the requirements of the Americans with Disabilities Act and all regulations thereunder, and that the Premises shall remain in compliance with throughout the term of this Permit.
- F. Compliance with Laws. In its use and occupancy of the Station, Operator shall strictly comply with all applicable Federal, State, City and local statutes, laws, ordinances, rules, and regulations. Operator shall not do or permit anything to be done in or on the Premises, that would constitute a public or private nuisance.
- G. Airport Development. The use of a portion of Airport property for operation of the Station is subordinate to the use of Airport property for aviation purposes. City reserves the right to develop and improve the Airport and all roadways, and land areas, and any other facilities at the Airport as it may see fit.

17. SECURITY

Operator shall comply with all applicable regulations of the Transportation Security Administration, the Department of Transportation, and the City relating to Airport security, including, but not limited to, Transportation Security Administration Regulations 49 CFR Parts 1540 and 1542 (formerly Federal Aviation Regulations 14 CFR Part 107) and the Airport Security Plan. If the City incurs fines or penalties as a result of such violations by Operator, or its officers, employees, patrons, agents, contractors, vendors, servants, customers, suppliers and invitees, then Operator shall reimburse the City upon demand for such.

18. DEFAULT AND REMEDIES

- A. Default by Operator. Each of the following shall be deemed a default by Operator ("Operator Default") hereunder and a material breach of this Permit:

- (1) Operator shall fail to pay any installment of Permit Fees or any other sum payable by Operator to City under this Permit when due, and such failure shall continue for ten (10) days after delivery by City to Operator of written notice specifying such failure;
- (2) Operator shall fail to pay when due any Taxes, assessments, or utility charges when due, or fails to deliver to City evidence of payment thereof, and such failure shall continue for thirty (30) days after delivery by City to Operator of written notice specifying such failure, subject to Operator's right to contest the amount of such Taxes;
- (3) Operator shall fail to keep, perform, or observe any of the non-monetary covenants, agreements, terms, or provisions contained in this Permit that are to be kept or performed by Operator, and Operator shall fail to cure such failure within thirty (30) days after delivery by City to Operator of written notice specifying the failure; provided, however, if the failure is curable, but not capable of being cured within such 30-day period, a Default shall not occur under this subsection unless Operator fails to commence the cure of the failure during such 30-day period and thereafter fails to diligently and continuously pursue the cure to its completion;
- (4) An involuntary petition shall be filed against Operator under applicable Bankruptcy Law, or a receiver of Operator, or of all or substantially all of the property of Operator, shall be appointed without acquiescence, and such petition or appointment shall not be discharged or stayed within sixty (60) days after the happening of such event; or
- (5) Operator shall make an assignment of its interest in the Station for the benefit of creditors or shall file a voluntary petition under applicable Bankruptcy Law, or seek relief under any other law for the benefit of debtors.
- (6) Operator falsifies or makes a material misrepresentation in any report required to be made by Operator under this Permit;
- (7) Any permit, license, or other governmental authority required to operate the Station is terminated, expires, or lapses, and is not reinstated within thirty (30) days;
- (8) Operator tenders more than one check in payment of fees or charges under this Permit which is not paid upon presentment by Operator's bank; and.
- (9) A third Operator Default shall have occurred within any twenty-four month period for a breach of the same Permit provision or arises out of the same or similar circumstances as a prior Operator Default, even if the Operator Defaults are cured within the applicable grace and cure periods.

B. Remedies of City. If an Operator Default occurs, City may at any time thereafter and without waiving any other rights hereunder or available to City at law or in equity (City's rights being cumulative), do any one or more of the following:

- (1) City may terminate this Permit by giving Operator written notice thereof, in which event this Permit and the leasehold estate hereby created and, except as provided in Section 18(c) and (d), all interest of Operator and all parties claiming by, through, or under Operator shall automatically terminate upon the effective date of such notice; and City, its agents or representatives, may, without further demand or notice, reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law,

without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Permit Fees or existing breaches hereof.

- (2) City shall have the right, but not the obligation, without judicial process and without incurring any liability therefor, enter upon the Station and perform any obligation that Operator has failed to perform. Performance by City shall not cure the Operator default, and all costs and expenses incurred by City in performing such obligations of Operator shall be deemed additional Permit Fees payable by Operator to City.
- (3) City may exercise any other right or remedy available to City under this Permit or at law or in equity.
- (4) All Permit Fees and other sums not paid on or before the date due shall bear interest at the Contract Rate from and after the date due; provided, however, that nothing herein shall operate or be construed to obligate the Operator to pay sums which are subject to applicable usury law which, taken together, exceed the maximum non-usurious amount or rate.

C. Default by City. The following shall be deemed a default by City ("City Default") and a material breach of this Permit:

- (1) The City shall fail to pay Operator for CNG sold to the City under this Permit when due, and such failure shall continue for ten (10) days after delivery by Operator to City of written notice specifying such failure; and
- (2) City shall fail to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Permit that are to be kept or performed by City, and City shall fail to cure such failure within thirty (30) days after delivery by Operator to City of written notice specifying the failure; provided, however, if the failure is curable, but not curable within such 30-day period, a City Default shall not occur unless City fails to commence the cure of the failure during such 30-day period and thereafter fails to diligently and continuously pursue the cure to its completion.

D. Operator's Remedies. If a City Default occurs, Operator may at any time thereafter and without waiving any other rights hereunder or available to Operator at law or in equity (Operator's rights being cumulative), do any one or more of the following:

- (1) Operator may terminate this Permit by giving City written notice thereof, in which event this Permit and the leasehold estate hereby created and all interest of Operator and all parties claiming by, through, or under Operator shall automatically terminate upon the effective date of such notice; and Operator shall thereafter be released of all other duties, obligations and responsibilities with respect to this Permit, except such provisions, including, but not limited to, Operator's indemnity obligations that shall survive termination.
- (2) Operator may exercise any other right or remedy available to Operator under this Permit or at law or in equity, except as expressly limited by the terms of this Permit.

19. SURRENDER OF PREMISES

A. Condition of Station. Upon the expiration of the term of this Permit, by expiration, termination, or otherwise, or of any renewal, or extension hereof, Operator shall peaceably quit, deliver up, and surrender the Premises, in good order, repair, and condition. Operator shall restore the Premises and make such repairs as may be necessary to restore the Premises to in substantially the same

condition as the Premises were upon inception of this Permit, reasonable wear and tear and City-authorized improvements excepted. Operator shall remove the Station, and all goods, equipment or material owned by Operator on the Premises; subject, however, to any valid lien that City may have thereon for unpaid Permit Fees or other charges payable hereunder.

- B. Repossession. Upon such expiration City may, without further notice, enter upon, reenter, possess, and repossess itself of the Premises by summary proceedings, ejectment, or otherwise, and may have, hold, and enjoy the Premises and all rental and other income therefrom, free of any claim by Operator with respect thereto. City shall not be deemed to have accepted a surrender of the Premises by Operator, or to have extended the term, other than by execution of a written agreement specifically so stating.
- C. Removal or Abandonment of the Station. Unless otherwise agreed to by the parties in writing, upon termination or expiration of this Permit, Operator shall have the right, but not the obligation, to (i) sell the Station to the City on mutually agreeable terms; (ii) remove the Station at CE's sole expense (including any and all merchandise, equipment, furnishings, fixtures, machinery and tools relating to the Station), from the Premises, which shall be restored in all material respects to their condition as of the date of this Permit, excluding the removal of any underground piping which may be left in place by Operator; or (iii) abandon the same in place by quitclaiming all of its right, title and interest therein to the City.
- D. City's Option to Purchase Station. In the event of a termination of this Permit for any reason except a termination by Operator due to a City Default, the City shall have the right and option, but not the obligation, to purchase the Station from Operator for the depreciated book value of the Station (calculated based on a ten-year useful life of the Station) less any grant monies received by CE with respect to the Station.

20. FORCE MAJEURE.

The failure of a party to perform its obligations hereunder shall be excused to the extent, and for the period of time, such failure is caused by the occurrence of an event of Force Majeure. Force Majeure shall mean acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, without limitation: Acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labor; epidemics, civil disturbances, acts of domestic or foreign terrorism, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery. Force Majeure does not include economic or market conditions which affect a party's cost, but not its ability, to perform. The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by facsimile transmission or telephone confirmed promptly thereafter in writing, and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible. Nothing contained herein shall be construed to require a party to settle a strike or other labor dispute against its will.

No event of Force Majeure shall relieve Operator from its monetary obligations under this Permit, including but not limited to Operator's obligations to pay Permit Fees hereunder, nor shall the term of this Permit be extended by any event of Force Majeure.

21. INSPECTION

When no state of emergency exists, after notice to Operator, City may enter upon the Premises during normal operating hours in order to inspect same. In an emergency, City may enter upon the Premises at any time and without notice to the Operator. City will use reasonable efforts to minimize the disruption to Operator resulting from any such inspections.

22. CASUALTY LOSS

- A. Restoration Upon Casualty Loss. If the Station is wholly or partially destroyed or damaged by fire or any other casualty ("Casualty"), the Operator may, in its absolute discretion, decide to cause the same to be restored and reconstructed with available insurance proceeds, if any (and such other proceeds as are made available to the Operator).
- B. No Restoration Following Casualty Loss. If the Operator determines not to restore and reconstruct the Station, then this Permit shall terminate upon thirty (30) days' written notice to the City.
- C. Abatement. The payment of the MAG shall abate following any Casualty during such period as the Station is inoperable.

23. CITY'S RIGHT TO RELOCATE STATION

- A. The City may at any time to relocate Operator's Station if necessary to accommodate the overall growth or development of the Airport, as determined by the Director in his sole discretion. If relocation becomes necessary, City shall send Operator a written notice of intent to relocate the Station, and if available, shall offer Operator a replacement site which is substantially equivalent in size and amenities. Operator may inspect the proposed relocation location. Should Operator disagree with the replacement location in its sole discretion, Operator shall, within thirty (30) days of receipt of the Director's written notice of intent to relocate, give written notice of objection to the Director. If Operator objects, the parties shall, for a period not to exceed thirty (30) days from the date of the objection notice, negotiate in good faith in an attempt to resolve the matter to the satisfaction of both parties; however if for any reason the disagreement is not resolved within thirty (30) days, the Director shall have the right to proceed with the relocation, and Operator shall either abide by the Director's decision and relocate, or terminate this Permit upon thirty (30) days' prior written notice to City.
- B. In the event of a relocation under this Section, the actual documented costs of relocation and disassembling the Station and re-assembling it on the new site shall be borne by the City. City shall not be liable, however, for any indirect, incidental, or consequential, costs incurred by Operator as a result of such relocation, including increased maintenance or operational cost, or loss of income, rentals or profits. Operator hereby waives any relocation payments or benefits that may be available under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (42 U.S.C. §4601 et seq.). The MAG payable under Section 5 shall abate during the period of time Operator is unable to operate the Station due to the relocation.
- C. If no suitable replacement location is available, or if Operator does not agree to relocation and elects to terminate the Permit, City agrees to pay, and Operator agrees to accept as its sole compensation and exclusive remedy for such early termination, (1) the unamortized cost (calculated based on a ten-year useful life in accordance with GAAP) of the Station and other improvements to the Premises owned or paid for by Operator, (2) the unamortized cost (determined in accordance with GAAP) of any personal property or trade fixtures installed and owned by Operator that cannot be reasonably be removed by Operator, and (3) benefits, if any,

available to Operator under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (42 U.S.C. §4601 et seq.). A termination of the Permit under this Section 22 is not a Taking for purposes of Section 23 CONDEMNATION.

24. CONDEMNATION

- A. Taking in Entirety. If the entire Premises are taken by any public or governmental body by right of eminent domain, this Permit shall terminate as of the date the condemning authority takes possession.
- B. Partial Taking. If less than all of the Premises is taken by any public or governmental body by right of eminent domain, and in City's reasonable judgment, the remainder lacks adequate area, location, configuration, or improvements to carry out the purposes for which the Station was constructed, the City may terminate the Permit by giving Operator written notice within thirty (30) days after the date the condemning authority takes possession. If the City does not terminate the Permit, the Permit shall continue in full force and effect as to the remainder of the Premises.
- C. Definition of Taking. As used in this section, a taking shall include a sale, transfer, or conveyance in avoidance or in settlement of condemnation or similar proceeding. Operator shall have no right to voluntarily devote or dedicate any portion of the Station to public use. A termination of the Permit under Section 22 CITY'S RIGHT TO RELOCATE STATION is not a Taking.

25. ASSIGNMENT AND SUBLEASING

Operator may not assign this Permit or sublease the Premises, in whole or in part, without the prior written consent of City, which may be granted, withheld or conditioned in City's sole and absolute discretion. Any assignment, sublease or other transfer that has not been expressly authorized by City in writing shall be void.

26. NOTICES AND CONTRACT ADMINISTRATION

- A. The Department of Aviation Manager of Administration and Business Development is City's designated contract administrator for this Permit, and is authorized to act on behalf of the Director to organize, schedule, coordinate matters related to this Permit, the Premises, and the Station, and to review and approve requests by Operator under this Permit. City may change its contract administrator by written notice to Operator.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.

- B. Notices. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (a) depositing same in the United States Mail, postage prepaid, certified with return receipt requested, addressed as set forth in this Section; (b) hand delivering the same to the party to be notified; or (c) overnight courier of general use in the business community of Austin, Texas. Notice given in accordance herewith shall be deemed delivered and effective on the earlier of actual receipt or three business days next following deposit thereof in accordance with the requirements above. Notices to City shall be sent to:

Executive Director
Department of Aviation
Austin-Bergstrom International Airport
3600 Presidential Blvd., Suite 411
Austin, Texas 78719

Notices to Operator shall be sent to:

CLEAN ENERGY
3020 Old Ranch Parkway, Suite 400
Seal Beach CA 90740
Attn: James N. Harger
Senior Vice-President & Chief Marketing Officer

The parties hereto may from time to time change their respective addresses for purposes of notice hereunder by giving a notice in accordance with the provisions of this section.

27. MISCELLANEOUS


- A. Gratuities. City may cancel this Permit if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Operator or any agent or representative to any official or employee of the City of Austin with a view toward securing favorable treatment with respect to the performance of this Permit. In the event this Permit is canceled by City pursuant to this provision, City shall be entitled, in addition to any other rights and remedies, to recover from the Operator the amount of the cost incurred by the Operator in providing such gratuities.
- B. Contingent Fees. Operator warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Operator for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
- C. Modification and Non-Waiver. Except as provided in Section 15.B, no variations, modifications, or changes to this Permit shall be binding unless in writing and executed by both parties. No waiver by either party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by City of any Permit Fees at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

- D. Governing Law. This Permit shall be construed and enforced in accordance with the laws of the State of Texas. Venue for any action arising out of or concerning this Permit shall be proper and lie exclusively in Travis County, Texas.
- E. Severability. If any provision of this Permit or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Permit, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.
- F. Relation of Parties. It is the intention of City and Operator that Operator shall be an independent contractor in performing its obligations under this Permit. Nothing in this Permit shall be construed to make City and Operator partners or joint venturers or to render either party hereto liable for any obligation of the other.
- G. Successors and Assigns. This Permit shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- H. Survival. Any terms and provisions of this Permit pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Permit shall survive the end of the term of this Permit.
- I. Time of the Essence. Time is of the essence in this Permit and in each and all of the provisions hereof.
- J. Entire Agreement.
- (1) This Permit together with the exhibits listed below, constitute the entire agreement between the parties hereto with respect to the subject matter of this Permit. Although this Permit may have been substantially drafted by one party, its is the intent of the both parties that all provisions be construed in a manner that is fair to both parties; interpreting no provision more strictly against one party than the other. It is further understood and agreed that neither Party nor its agents have made any representations or promises with respect to this Permit, except as expressly set forth herein, and that no claim or liability or cause for termination shall be asserted by eith Party against the other, and neither party shall be liable by reason of the breach of any representations or promises not expressly stated in this Permit. The City and Operator are the only parties to this Permit and as such are the only parties to enforce its terms. Nothing in this Permit gives, or shall be construed to give or provide, any benefit, direct or indirect, to third parties unless a third party is expressly described as an intended beneficiary of its terms.
 - (2) The parties hereto acknowledge that they have thoroughly read this Permit, Including any exhibits hereto, and have sought and received whatever advice needed for them to form a full and complete understanding of all rights and obligations herein.
 - (3) The exhibits to this Permit are as follows:


Exhibit A	Premises
Exhibit B	Pricing for Sales of CNG to the City
Exhibit C	Operator's Construction Obligation & Schedule

IN WITNESS WHEREOF, City and Operator have executed this Permit through their duly authorized representatives as of the 1st day of December 2009.

CITY OF AUSTIN

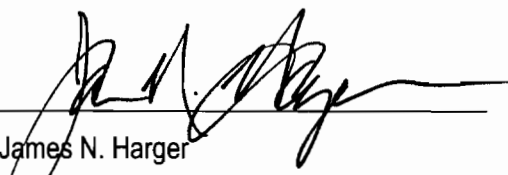


Approved as to form
Assistant City Attorney



Jim Smith
Executive Director of Aviation

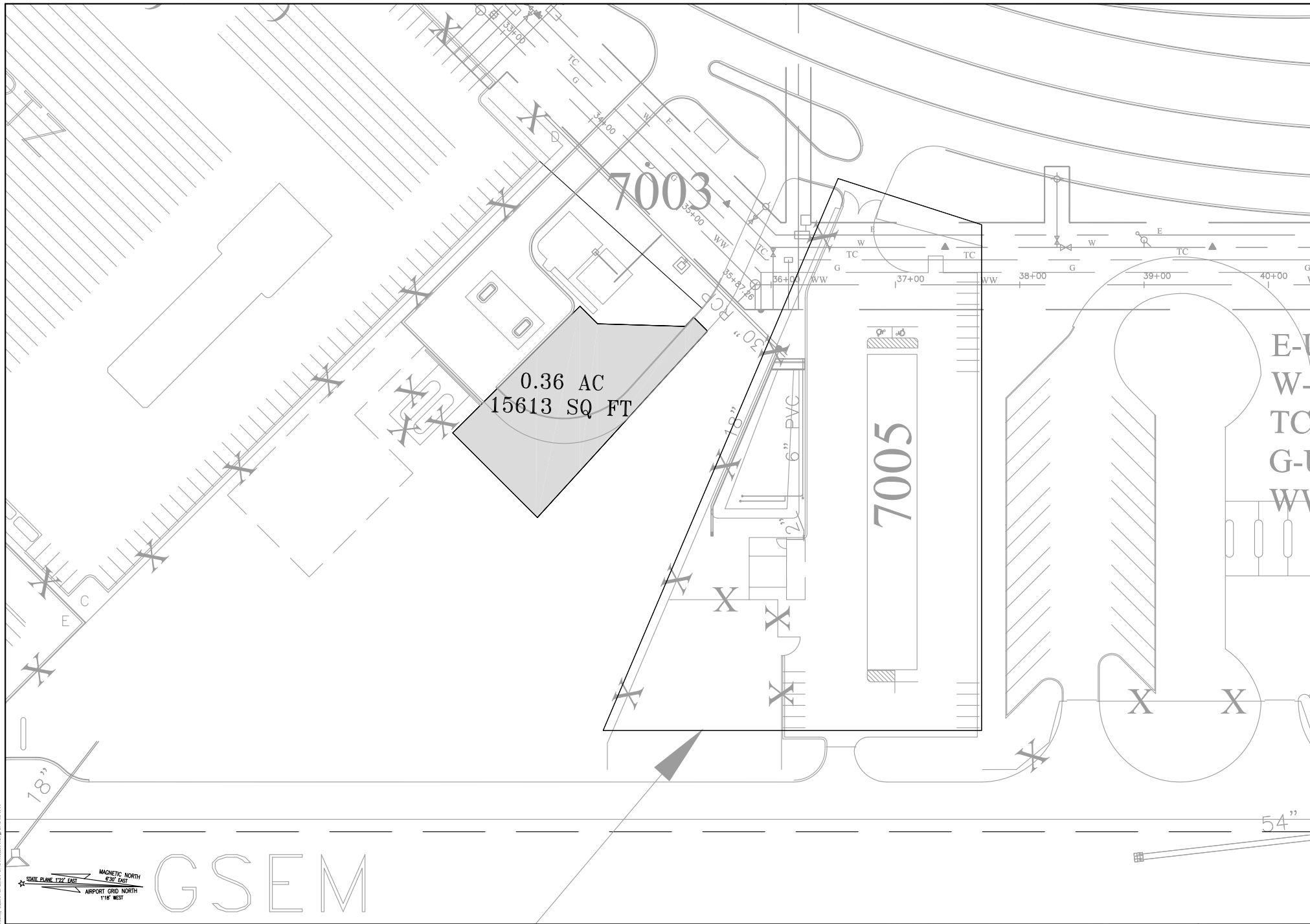
CLEAN ENERGY



James N. Harger
Senior Vice-President & Chief Marketing Officer

EXHIBIT A

THE PREMISES

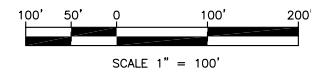


L:\P30 Alternate Fuel Program\Dispensing Facility\CLEAN ENERGY-CNG FACILITY.dwg, CNG.dwg, 11



PLANNING & ENGINEERING
DEPARTMENT OF AVIATION
CITY OF AUSTIN

AUSTIN-BERGSTROM INTERNATIONAL AIRPORT CLEAN ENERGY-CNG FACILITY



FILE: L:\P30 Alternate Fuel
DRAWN BY: LB.
CHECKED BY: RTC.
APPROVED BY:
DATE: 2 OCT 2009
SCALE: 1"=100'
EXHIBIT

EXHIBIT B

PRICING FOR SALES OF CNG FOR CITY VEHICLES

PRICING FOR SALES OF CNG FOR CITY VEHICLES

The CNG price per GGE for sales of CNG to the City shall be the lesser of:

- the price charged to Retail Customers purchasing CNG at the Station minus the applicable Royalty in effect at the time, or
- the price determined by the following formula:

$$\text{The Index Price per GGE} + \text{the Margin Price per GGE} + \text{applicable taxes, if any} = \text{CNG Price per GGE for City Vehicles}$$

The Index Price per GGE = Operator's actual delivered price of CNG delivered to the Station converted to GGEs

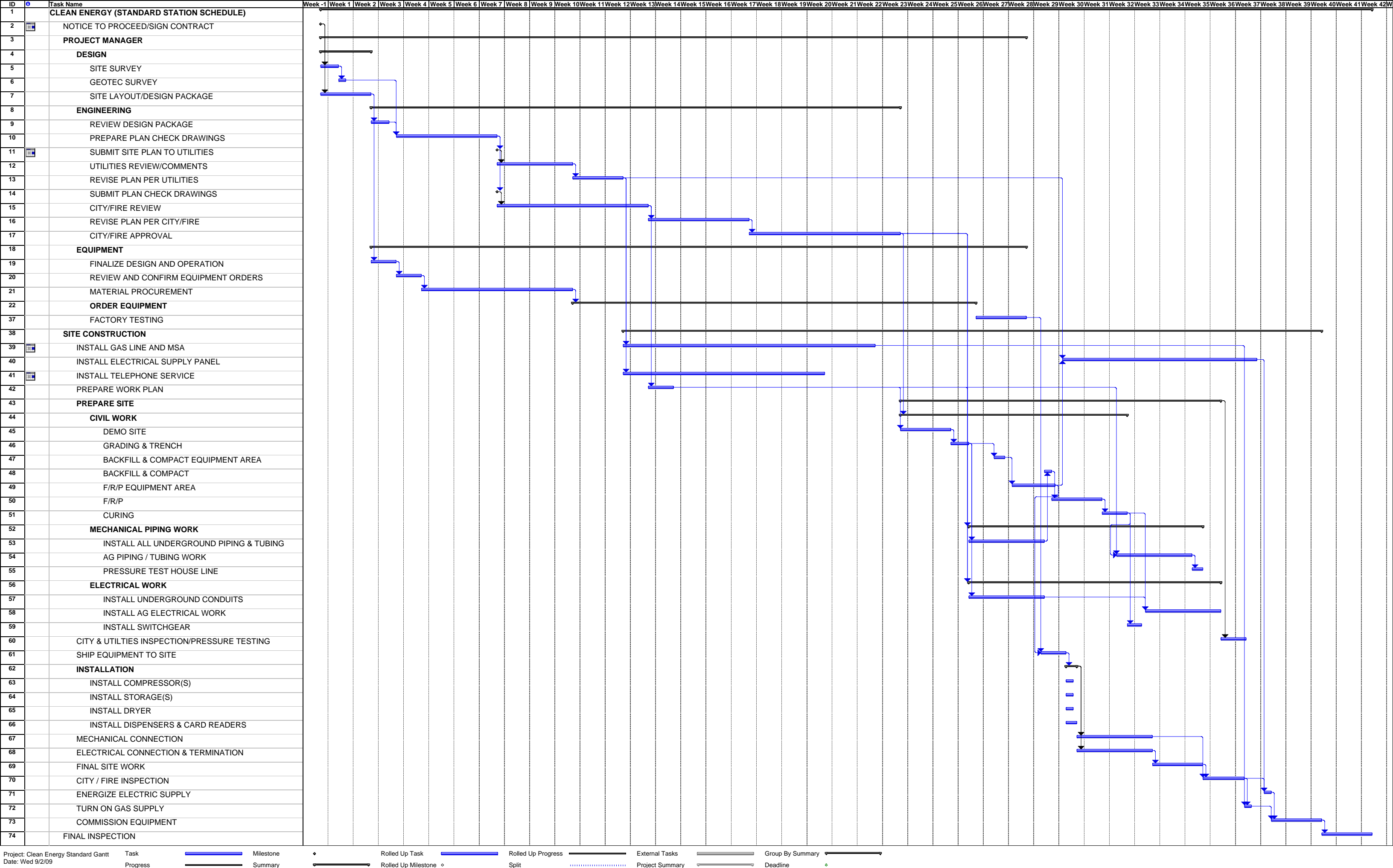
The Margin Price per Gasoline Gallon Equivalent in effect on the Effective Date is \$0.63 per GGE.

Beginning on the first anniversary of the Effective Date, and annually thereafter throughout the remainder of the term of this Permit, including any renewals, the Margin Price per GGE of CNG charged by CE shall be adjusted by the increase in the United States Bureau of Labor Statistics Consumer Price Index All Urban Consumers, for South Urban – All Items (1982-84=100) [CPI], from the Effective Date of this Permit for the first such adjustment, or the date of the last adjustment for each subsequent adjustment, through the date of the current adjustment.

If the CPI should cease to be published, the Parties shall use their best good faith efforts to agree upon a substitute index that most closely approximates the CPI in gauging changes in the cost of living for urban consumers. The Margin Price shall be rounded to the nearest tenth of one cent (\$0.001). Operator shall give the City written notice of any change in the Margin Price, including its calculation, prior to implementing any increase.

EXHIBIT C

OPERATOR'S CONSTRUCTION OBLIGATION & SCHEDULE



AGENDA



Thursday, November 19, 2009

**Aviation
RECOMMENDATION FOR COUNCIL ACTION****Item No. 10**

Subject: Authorize negotiation and execution of a lease with Clean Energy, a California Corporation, of approximately 16,800 square feet of land at Austin-Bergstrom International Airport for a compressed natural gas motor vehicle fueling station, for an initial term of ten years, with the option to renew for up to two additional terms of five years each.

Amount and Source of Funding: Revenue Generating Lease.

Fiscal Note: There is no anticipated fiscal impact. A fiscal note is not required.

For More Information: Patti Edwards, Aviation Director, 530-6366.

Boards and Commission Action: Recommended by the Austin Airport Advisory Commission.

Under the proposed lease, Clean Energy will design, install, construct, operate and maintain a compressed natural gas (CNG) fueling station at the Airport. The station will serve both public and private motor vehicles that are fueled by CNG. The station will be located adjacent to the existing propane fueling station on Spirit of Texas Drive.

Increasing numbers of fleet vehicles are being powered by CNG, including many that operate at the airport. Both off-airport parking lot operators have plans to convert their airport shuttle buses to CNG from diesel or other fuels. (The Airport's own parking shuttle fleet is also alternatively fueled - using propane.) CNG burns cleaner than gasoline or diesel fuel, and produces substantially less NOX and other emissions. The use of CNG also reduces reliance on foreign oil imports.

The lease would be for a term of ten years from the date the station opens, with the option to renew for up to two additional terms of five years each. For the use and occupancy of Airport land, Clean Energy would pay the greater of a minimum annual guarantee of \$5,000 or a "royalty" of five cents per gasoline gallon equivalent (GGE) of CNG sold to retail customers. The rental rates would increase for renewal terms. In addition, City CNG-powered vehicles would be entitled to fuel at the station for a discounted rate.

● [View All](#) (1 of 1) : Document validated successfully

MA - 8100- GA120000056- 1- New- Draft

Action Menu

[Load T and C Ship/Bill To Lines](#)



General Information

Document Name :	<input type="text"/>	Procurement Folder :	18014
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Fiscal Year :	<input type="text"/>	Effective Begin Date :	01/01
Period :	<input type="text"/>	Expiration Date :	12/31
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Modification

Requestor Issuer Buyer

Issuer ID :	helgren	Buyer Team :	
	Brenda Helgren	Buyer :	fasdcentral
	974-2500		See Solicitation
	brenda.helgren@austintexas.gov		512-974-2500
Requestor ID :	wells		purchinfo@austintexas.gov
Name :	JERRY DINSE		
Phone Number :	530-6344		
Email :	marsha.wells@austintexas.gov		

▼Thresholds




Minimum Order Amount : Minimum Order Value : ☐
Maximum Order Amount : Maximum Order Value : ☐
Not to Exceed Amount : Not to Exceed : ☒

▼Extended Description

Extended Description :

Procurement Agreement for Compressed Natural Gas (CNG) from Clean Energy/Transtar for use in City of Austin Department of Aviation equipment and vehicles modified to run on CNG. Annual Expense for Shuttle fuel and other Department of Aviation vehicles will be \$200,000.00. 10 years with 2-5 additional years.

▶Default Shipping/Billing**▼Reporting**

Reporting 1 : 
Exceptions
Reporting 2 : 
No Sustainability Impact
Reporting 3 : 
NOT APPLICABLE

▶Document Information[Top](#)

Save	Undo	Print	Validate	Submit	Close
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